



March 13, 2002

Ms. Shelly Doty
City Secretary/Records Manager
City of Cleburne
P.O. Box 677
Cleburne, Texas 76033-0677

OR2002-1215

Dear Ms. Doty:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161805.

The City of Cleburne (the "city") received a request for "written statements admissible in Cleburne Court" relating to a no parking zone at 2 N. Caddo Street. You state that the city has released some responsive information to the requestor. You claim, however, that the requested statements do not currently exist and therefore are not within the purview of the Public Information Act. We have considered your claim and reviewed the submitted requests for information.

It is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information in existence at the time the governmental body receives the request for information, and does not require a governmental body to prepare new information in response to a request. *See A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex.App.-Eastland 2000, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986) (document is not within the purview of the act if, when a governmental body receives a request for it, it does not exist), 342 at 3 (1982) (Act applies only to information in existence, and does not require the governmental body to prepare new information), 87 (1975). Nor does the Act require a governmental body to prepare answers to questions. *See* Open Records Decision No. 555 at 1-2 (1990) (considering request for answers to fact questions). Accordingly, the city is not required to furnish the requested written statements to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. R. Saldivar', with a stylized flourish at the end.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/sdk

Ref: ID# 161805

c: Mr. Richard Neace
1501-D North Main
Cleburne, Texas 76033